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| 11 | UNITED STATES | S DISTRICT | COURT | |
| 12 | FOR THE NORTHERN D | DISTRICT OF | F CALIFORNIA | |
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| 14 | JOHN TEIXEIRA, STEVE NOBRIGA, GARY GAMAZA, | CASE NO. | : 3:12-CV-03288 SI | |
| 15 | CALGUNS FOUNDATION (CGF), | FPRATA | MEMO DE: | |
| 16 | INC., SECOND AMENDMENT FOUNDATION (SAF), INC., and | | ERRATA MEMO RE: Documents # 020 and 021 | |
| 17 | CALIFORNIA ASSOCIATION OF | Date: | December 21, 2012 | |
| 18 | FEDERAL FIREARMS LICENSEES, INC. (Cal-FFL), | Time: Place: | 9:00 a.m. United States District | |
| 19 | | | Court - San Francisco 450 Golden Gate Ave. | |
| 20 | Plaintiffs, | Court: Judge: | Courtroom 10, 19 th Floor Hon. Susan Illston | |
| 21 | vs. | | | |
| 22 | COUNTY OF ALAMEDA, ALAMEDA | | | |
| 23 | BOARD OF SUPERVISORS (as a policy making body), WILMA CHAN | | | |
| | in her official capacity, NATE MILEY | | | |
| 24 | in his official capacity, and KEITH CARSON in his official capacity. | | | |
| 25 | | | | |
| 26 | Defendants. | | | |
| 27 | | 4 | | |

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TABLE OF AUTHORITIES 1 2 **Federal Cases** Alliance for Wild Rockies v. Cottrell (9th Cir. 2011) 632 F.3d 1127......7 3 4 Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991)......10 5 Buckhannon Bd & Care Home, Inc., et al., v. W. Virginia Dept of Health and Human Res., et. al., 532 U.S. 598 (2002).......12 6 Cantwell v. Connecticut, 310 U.S. 296 (1940)......9 7 8 Citigroup Global Markets, Inc. v. 9 VCG Special Opportunities Master Fund Ltd. (2nd Cir. 2010) 598 F.3d 30.....7 City of L.A. v. Alameda Books, 535 U.S. 425 (2002)......8 10 11 City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986)......10 12 Ezell v. City of Chicago, 651 F.3d 684, 708-709 (7th Cir. 2011)......11, 12 13 14 Forsyth County v. Nationalist Movement, 505 U.S. 123 (1992)......9 15 Heffron v. International Society for Krishna Consciousness, Inc. 16 17 18 Niemotko v. Maryland, 340 U.S. 268 (1963)......9 19 20 Schad v. Mt. Ephraim, 452 U.S. 61 (1981)......8 21 Shuttlesworth v. Birmingham, 394 U.S. 147 (1969)......9 Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546 (1975)......9 22 Winter v. Natural Resources Defense Council, Inc. (2008) 555 U.S. 7......6 23 Young v. American Mini Theatres, Inc., 427 U.S. 50 (1976).......8 24 25 26 State Cases Doe v. City and County of San Francisco, 136 Cal. App. 3d 509......11 27 Fiscal v. City and County of San Francisco, 158 Cal. App. 4th 895......11

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